

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
D. KHIABAN AND)
T. KHIABAN)
)
)
)
)

OTA Case No. 230513282

OPINION

Representing the Parties:

For Appellants: D. Khiaban

For Respondent: Katherine Gan, Graduate Legal Assistant

For Office of Tax Appeals: Louis Ambrose, Attorney

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Khiaban and T. Khiaban (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$4,020.27 for the 2021 tax year.¹

Appellants waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUES

1. Whether appellants have established reasonable cause for the late payment of tax.
2. Whether appellants have established a basis to abate the estimated tax penalty.

FACTUAL FINDINGS

1. Appellants timely filed a 2021 California Resident Income Tax Return (Form 540) on October 15, 2022, which reported total tax of \$77,954, estimated payments of \$40,400, tax due of \$37,554, and an estimated tax penalty of \$504, for a total amount due of \$38,058. Appellants submitted a \$38,058 payment with the return.

¹ Appellants’ claim for refund is the sum of the late-payment penalty of \$3,004.32, plus an increase in appellants’ reported estimated tax penalty of \$442, plus applicable interest of \$573.95, which equals \$4,020.27. Appellants do not present separate arguments with respect to the interest, and interest will not be addressed further in this Opinion.

2. On November 7, 2022, respondent sent appellants a Notice of Tax Return Change, informing appellants of the imposition of a late-payment penalty of \$3,004.32, a \$442 increase in appellants' reported estimated tax penalty (from \$504 to \$946), and applicable interest.² On the same day, respondent sent appellants a State Income Tax Balance Due Notice (Notice), informing appellants of an unpaid balance of \$4,020.27.
3. Appellants paid the Notice balance due on November 15, 2022, and filed a claim for refund.
4. Respondent subsequently sent two separate letters to deny appellants' claim for refund.³
5. Appellants then filed this timely appeal.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause for the late payment of tax.

R&TC section 19001 provides that the personal income tax “shall be paid at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).” R&TC section 19132 provides that a late-payment penalty shall be imposed when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return. The late-payment penalty has two parts. The first part is five percent of the total unpaid tax. (R&TC, § 19132(a)(2)(A).) The second part is a penalty of 0.5 percent per month, or portion of a month (not to exceed 40 months), calculated on the outstanding balance. (R&TC, § 19132(a)(2)(B).)

The late-payment penalty may be abated if the taxpayer shows that the failure to make timely payment was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) The taxpayer has the burden of proof to show that reasonable cause exists to support abatement of the late-payment penalty. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA.025P.) To

² For the 2021 tax year, appellants calculated their required annual payments using 100 percent of the tax shown on the 2020 return of \$64,179, resulting in an estimated tax penalty of \$504. Due to the fact that appellants' 2020 AGI exceeded \$150,000, respondent recalculated the estimated tax penalty using a required annual payment amount of \$70,090, which is the lesser of \$70,596.90 (110 percent of the tax shown on the 2020 return) and \$70,090 (90 percent of the tax shown on the 2021 return). (See Internal Revenue Code, § 6654(d)(1)(C).) Based upon this higher required annual payment amount, respondent recalculated and imposed an estimated tax penalty of \$946.

³ Respondent sent letters to appellants on April 10, 2023, and April 11, 2023, to deny appellants' claim for refund of the estimated tax penalty of \$946 plus applicable interest, and the late-filing penalty of \$3,004.32 plus applicable interest, respectively.

establish reasonable cause for a late payment of tax, a taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Bindley*, 2019-OTA-179P.)

Here, it is undisputed that appellants failed to make a timely payment of tax and appellants do not dispute that the late-payment penalty was correctly calculated in accordance with the statute. Therefore, the late-payment penalty was properly imposed.

Appellants argue reasonable cause for the abatement of the late-payment penalty. In appellants' refund claim filed with respondent, they asserted that significant investment income was unknown until they filed their 2021 individual tax return in October 2022. They also claim they were unaware of the underpayment of their 2021 taxes until informed by their CPA in October 2022, the month of the 2021 tax return's extended filing due date. On appeal, appellants clarified that they discovered some incorrect items on their 2020 partnership return, which required amendments to the partnership's and appellants' 2020 returns before they could accurately determine the correct tax liability for the 2021 tax year at the time of filing their individual tax return.

However, appellants' assertion that they lacked information necessary to make a reasonably accurate estimate of their tax liability or had difficulty in calculating their tax liability with the documents available does not, by itself, constitute reasonable cause for a late payment of tax. (*Appeal of Moren*, 2019-OTA-176P.) To demonstrate reasonable cause, appellants must show the efforts they made to acquire the information from the source that held it, and that difficulties in obtaining the necessary information led to their delay in payment. (*Ibid.*) Appellants have not provided any information that demonstrates they attempted to obtain information necessary to determine their investment income, to calculate the amount of tax due for 2021, and to timely pay it, but were prevented from doing so as a result of the events they describe in their reasonable cause statements. Appellants have not shown they exercised ordinary business care and prudence, and as a result, have not established reasonable cause to abate the late-payment penalty.

Issue 2: Whether appellants have established a basis for abatement of the estimated tax penalty.

Internal Revenue Code (IRC) section 6654 imposes an addition to tax, which is treated and often referred to as a penalty, where an individual fails to timely pay estimated tax.⁴ Subject to certain exceptions not relevant to the issues on appeal, R&TC section 19136 incorporates IRC section 6654. The estimated tax penalty is similar to an interest charge in that it is calculated applying the applicable interest rate to the underpayment of estimated tax (See IRC, § 6654(a) [calculating the estimated tax penalty by reference to the interest rate imposed on underpayments]; R&TC section 19136(b) [referring to R&TC section 19521 which, with modification, conforms to the federal interest provisions in IRC section 6621].) The estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (*Appeal of Saltzman*, 2019-OTA-070P.) There is no general reasonable cause exception to imposition of the estimated tax penalty.⁵ (*Appeal of Johnson*, 2018-OTA-119P.)

Here, it is undisputed that appellants failed to make timely payments of estimated tax and appellants do not dispute that respondent correctly calculated the estimated tax penalty in accordance with the statute.⁶ Instead, appellants make reasonable cause type arguments for abatement of the estimated tax penalty which are similar to those for the late-payment penalty above, stating specifically that they “paid estimated tax payments based upon prior year [2020] income”, and that “[t]he estimated tax payments for years 2021 were not made on time, because the correct tax liability was not available.” As stated above, there is no reasonable cause exception to the imposition of the estimated tax penalty. (*Appeal of Johnson, supra.*)

Further, appellants’ unexpected investment income and difficulties estimating their tax liability do not constitute unusual circumstances under which the imposition of the estimated tax

⁴ Where estimated tax payments are due, R&TC section 19136.1(a)(2) generally requires that the payments be made in installments on or prior to April 15 and June 15 of the applicable tax year, and January 15 of the subsequent tax year.

⁵ Although there is no provision allowing for the abatement of the addition to tax based solely on reasonable cause, IRC section 6654(e)(3) provides two avenues upon which the addition to tax may be waived. However, appellants do not argue and evidence in the record does not indicate that any of these would apply.

⁶ Appellants do not argue that respondent’s calculation of the estimated tax penalty is incorrect, but instead appear to argue that the information they used to calculate their 2020 income tax was incorrect, resulting in an underpayment of estimated tax for the 2021 tax year. As this is a reasonable cause type argument, the Office of Tax Appeals does not address the calculation of the estimated tax penalty in this appeal.

penalty would be against equity and good conscience. (IRC, § 6654(e)(3)(A); *Appeal of Johnson, supra.*) As stated above, there are no other relevant statutory exceptions that apply to the arguments presented by appellants.


Based upon the reasons stated above, appellants have not established a basis for abatement of the estimated tax penalty.

HOLDINGS


1. Appellants have not established reasonable cause for the late payment of tax.
2. Appellants have not established a basis for abatement of the estimated tax penalty.


DISPOSITION

Respondent’s action denying appellants’ claim for refund is sustained.

Signed by:

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 Seth Elsom
 Hearing Officer

We concur:

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 Eddy Y.H. Lam
 Administrative Law Judge

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DC88A60D8C3E442...
 Keith T. Long
 Administrative Law Judge

Date Issued: 11/19/2024